SERVED: July 28, 1992

NTSB Order No. EA-3634

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of July, 1992

THOMAS C. RICHARDS, Administrator, Federal Aviation Administration, Complainant, v. MICHAEL G. MEALEY, Respondent.	Docket SE-12571

OPINION AND ORDER

The respondent, by counsel, has appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman issued in this proceeding on June 11, 1992, at the conclusion of an evidentiary hearing.[1] By that decision the law judge affirmed an emergency order of the Administrator revoking respondent's

[1]An excerpt from the hearing transcript containing the initial decision is attached.

commercial pilot certificate because, during the period of March 28, 1990 to February 10, 1992, he allegedly operated commercial flights for a television station and a university in Huntington, West Virginia, when he did not possess authority to do so under Part 135 of the Federal Aviation Regulations (FAR), 14 CFR Part 135.[2] The lack of appropriate authority, according to the emergency order, which served as the complaint in this action, resulted in respondent's violation of various regulatory requirements with which Part 135 certificate holders must comply.[3] For the reasons discussed below, we will deny the appeal, to which the Administrator has filed a reply in opposition.

The issues raised by respondent on appeal[4] warrant only brief comment, for the respondent at the hearing advanced no evidence, either documentary or testimonial,[5] in support of his defense that Part 135 operating authority was not necessary for

[2]The complaint alleges that respondent operated "at least 13" such flights. At the hearing, counsel for the Administrator introduced evidence as to an additional three flights.

[3]A copy of the emergency order of revocation is attached. It sets forth a summary of both the numerous provisions in Part 135 and the single provision in Part 91 that respondent's allegedly unauthorized flights and his alleged failure to make certain maintenance records available for inspection violated.

[4]No response is necessary to respondent's contention that the record does not support the Administrator's finding that an emergency requiring immediate action existed, for the Board is not empowered to review those determinations. See, e.g., Administrator v. Klock, NTSB Order No. EA-3045 (1989), at 7, n. 9.

[5]The respondent called no witnesses, did not himself testify, and offered no exhibits at the hearing.

the flights referenced in the complaint because they were not operated for compensation or hire but, instead, involved shared expenses.[6] The Administrator, on the other hand, established, through the testimony of FAA inspectors and employees of both WSAZ and Marshall University, that respondent charged for the flights and received payments for them in amounts sufficient to more than cover his direct operating expenses.[7] Moreover, the Administrator's evidence unequivocally demonstrated that the individuals involved with the flights for the television station and the university were unaware of any understanding or intent to share the expense of these flights with respondent, and they expressly declined respondent's requests, after this action was initiated, to sign statements indicating that the costs of the flights had been shared.

Given the absence of any evidence to contradict the Administrator's showing that the subject flights were for compensation or hire, we find it unnecessary to attempt to assess whether the estimates of one of the inspectors as to the hourly costs for the flights was predicated on incorrect assumptions

[6] Although respondent does not specify the precise basis for his defense to the Administrator's charges, we note that, for example, a private pilot is entitled to "share the expenses of a flight with his passengers." See FAR section 61.118(b). The Administrator appears to acquiesce in the assertion that a commercial pilot certificate holder can do the same.

[7] In support of the testimony of his witnesses, the Administrator introduced extensive documentation, including invoices respondent sent to the TV station and to the school for amounts due him for the various flights and their canceled checks payable to him for those bills.

about the respondent's actual expenses. The issue here is not whether respondent earned a profit from these flights, although the record would appear to support a conclusion that he did, but whether he charged his passengers for providing transportation they had requested for their own purposes. On that question there is no evidentiary dispute.

We also find it unnecessary to decide whether the law judge erred in allowing the Administrator to reopen his case to call respondent to the stand in effect to admit or deny whether he was the pilot-in-command of the three flights that had not been originally identified in the complaint. See Footnote 2, supra. The evidence in the record already fairly established or suggested that he had been, both for those flights and for the 13 flights the complaint did reference, and with respect to which he had admitted his role as pilot-in-command, and, as the law judge appears to have recognized, the respondent's answer to the single question he was asked was essentially extraneous to a proper disposition of the case. In these circumstances, we believe that any error associated with the law judge's ruling in this respect must be viewed as harmless.

In light of the foregoing, we find that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's emergency order of revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and

2. The initial decision and the emergency order of revocation are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.